

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

BRUSH HILL TRANSPORTATION
COMPANY

Employer¹

and

AMALGAMATED TRANSIT UNION,
LOCAL 1548, AFL-CIO, CLC

Union-Petitioner

Cases 1-UC-799
1-UC-802

DECISION AND ORDER²

The Union-Petitioner, hereafter called Local 1548 or the Union, seeks to clarify a longstanding bargaining unit to include 25-30 trolley drivers³ and 5 maintenance supervisors.⁴ The Employer, Brush Hill, asserts that the Union's petitions are untimely and should be dismissed. The Employer also argues that the trolley drivers do not share such an overwhelming community of interest with the unit employees to permit accretion into the unit, and that the maintenance supervisors should remain excluded as they are statutory supervisors within the meaning of Section 2(11) of the Act. The Union maintains that it has always retained an interest in representing both groups of workers.

¹ The name of the Employer appears as amended at the hearing.

² Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; and 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

³ Case 1-UC-799.

⁴ Case 1-UC-802.

With respect to the trolley drivers, it claims that they should be included in the unit because they share a community of interest with the coach drivers who are included in the unit. With respect to the maintenance supervisors, the Union disputes the assertion that they perform Section 2(11) supervisory duties, and argues that they belong in the unit because they perform work traditionally performed by mechanics, a classification of employee expressly included in the unit description.

I find that unit clarification is inappropriate for both classifications in issue because the parties have historically excluded them from the unit represented by the Union-Petitioner, and there is no evidence of any recent, substantial changes in the duties of either classification. Accordingly, I shall dismiss both petitions on this basis.

BACKGROUND

Brush Hill is a motor coach transportation business based in Randolph, Massachusetts.⁵ It provides passenger services through two relatively independent operations: a coach service that operates motor coaches in and around New England and to and from long-distance destinations in the United States, Canada, and Mexico, and a trolley service doing business under the name Beantown Trolley Tours, which operates trolleys in and around Boston, Massachusetts. Among other personnel, Brush Hill employs three categories of employees who are involved here: coach drivers, trolley drivers, and maintenance supervisors.

Brush Hill employs about 30 coach drivers and about 25 trolley drivers. Some coach drivers, and many trolley drivers, are part-time workers. The drivers are assigned to one of the two types of vehicles, motor coach or trolley, and normally do not cross over to drive the other type of vehicle. Brush Hill also employs a team of maintenance personnel, including 5 maintenance supervisors, one body man, and 6-7 preventive utility men/helpers. The Employer does not currently employ anyone in the unit classification of mechanic.

Lawrence Anzuoni, Sr. is the president and part owner of Brush Hill, John McDonough is the director of operations, Salvatore Rauseo is the operations manager or general manager, overseeing both coach and trolley operations, Robert Marciello is the maintenance administrator, Lawrence Anzuoni, Jr. oversees the maintenance department and coach operations, and Richard Anzuoni oversees the trolley operations.

⁵ Brush Hill operates from several sites in the Boston area. The maintenance facility and main office are located at 439 High Street, in Randolph, Massachusetts. The main ticket office and central drop off/pick up point for organized tours is located at Park Square, Boston. Trolleys are dispatched out of several locations in downtown Boston, including an office located at 14 South Charles Street, at the State Transportation Building, and from various terminals around downtown Boston.

For many years, Local 1548 has represented a unit of Brush Hill's employees, including the coach drivers, maintenance employees, and mechanics. Here, the Union seeks to accrete into the existing unit both the trolley drivers and the maintenance supervisors.

BARGAINING HISTORY

Brush Hill employees were first organized in 1964. John McDonough, the Employer's director of operations, has participated in collective bargaining and labor relations on behalf of Brush Hill since 1972 and, in that time, has helped negotiate 13 successive collective-bargaining agreements with Local 1548. Maintenance Administrator Robert Marciello has participated in the process since 1993. For the Union, Charles Ryan, Local 1548's president, and Joe Walsh, a representative from the International Union, have participated for at least the past three collective-bargaining agreements.

It is undisputed that the unit description has remained unchanged for at least the past five contract negotiations, or since before the trolley operation was first introduced in the mid-1980s. The recognition clause of the parties' current collective-bargaining agreement describes the unit as:

[A]ll of [the company's] bus operators, maintenance employees, stock clerks and mechanics excluding all other employees, such as but not limited to, dispatchers, purchasing agents, office and clerical employees, professional employees, guards and supervisors as defined under the National Labor Relations Act.

The Union has never proposed through collective bargaining or the contractual grievance procedure that the unit definition be modified to include either the trolley drivers or the maintenance supervisors, nor has it demanded that the Employer recognize and bargain with it concerning these groups of employees.

The most recent negotiations began in October 2001, and concluded in June 2002, resulting in the execution, on June 28, 2002, of a three-year agreement effective from January 1, 2002 through December 31, 2004. McDonough was the lead spokesperson for the Employer, while Ryan was the lead spokesperson for the Union. The prior contract expired on December 31, 2001, having been a four-year agreement, extended for an additional year by mutual agreement.

During the most recent bargaining sessions, the Union prepared a multi-page proposal containing both economic and non-economic items. There were no written proposals concerning the scope of the bargaining unit, or, more specifically, concerning trolley drivers or maintenance supervisors. Similarly, during bargaining in 1996, there were no proposals exchanged concerning the scope of the bargaining unit.

In November 1996, a Board election was held in a unit of trolley drivers, excluding all other employees pursuant to a stipulated election agreement in which all parties, including Local 1548, agreed to the unit description. Two unions, Local 1548 and a Teamsters local, were included in that election. The trolley drivers did not select either union as their representative.

In 1997, the Union filed a petition with the Board seeking to represent the trolley drivers, but subsequently withdrew it before any election was conducted.

Union representative Walsh testified that during prior contract negotiations in 1996 or 1997, he spoke to Brush Hill's owner, Lawrence Anzuoni, Sr., about the Union's desire to represent trolley drivers during a brief encounter in the parking lot outside the Randolph facility after a bargaining session, although he does not recall precisely what was said. Anzuoni, Sr. testified that he did not discuss the trolley drivers with Ryan or Walsh in that encounter, but that they discussed the issues then being negotiated at the bargaining table. He denied ever speaking to any Union representative about the representation of trolley drivers or maintenance supervisors.

With respect to the Union's position regarding the maintenance supervisors, it maintains that at least some of the work performed by maintenance supervisors is work that could be, and at times has been, performed by unit mechanics. Additionally, at an unspecified time "last year," Brush Hill hired a maintenance supervisor to replace a retired unit mechanic. Finally, Union representative Walsh testified that he regularly raised his concern with Brush Hill management about maintenance supervisors doing unit work.

ANALYSIS

Unit clarification may be appropriate where an employee classification has been newly created or has undergone recent substantial changes so as to create doubt regarding whether that classification should be accreted to an existing unit. But, unit clarification may not be used to add to a unit an employee classification that historically has been excluded from the unit. Bethlehem Steel Corp., 329 NLRB 243, 243-244 (1999); Union Electric Co., 217 NLRB 666 (1975). Rather, a petition seeking to include a classification historically excluded raises a question concerning representation which can only be resolved through an election, or based on majority status. Boston Cutting Die Co., 258 NLRB 771 (1981). As to the accretion standard, the Board will find a valid accretion when the additional employees have little or no separate group identity and when they share an overwhelming community of interest with the preexisting unit to which they are accreted. In making this determination, the factors considered are geographic proximity of the groups; bargaining history; whether there is an integrated operation; similarity of skills, duties, and working conditions; contact between the groups; interchange; and the extent of common day-to-day supervision. Staten Island University Hospital, 308 NLRB 58, 61 (1992).

Moreover, during the term of a contract, unit clarification is not appropriate for upsetting an agreement or established practice of a union and employer with respect to the unit placement of employees. Monongahela Power Co., 198 NLRB 1183 (1972); Wallace-Murray Corp., 192 NLRB 1090 (1971).

Here, the record establishes that the trolley-driver position has historically been excluded from the collective-bargaining unit. Trolley drivers have been employed by Brush Hill for almost two decades and have never been included in the unit. The Union has never sought to include this position in the unit during its negotiations with the Employer for the past five successive collective-bargaining agreements since the trolley business was introduced in the mid-1980s. The Union has never demanded that the Employer bargain about the terms and conditions of employment of the trolley drivers, or protested when the Employer acted unilaterally in this regard. Furthermore, there is no evidence that the trolley driver position has undergone any recent, substantial changes to call into question its unit placement. Indeed, there is no evidence the position has changed since the parties stipulated in 1996 to a Board election in a unit of Brush Hill's trolley drivers, a stipulation that necessitated their agreeing that a question concerning representation existed for those employees. For these reasons, I find that clarification of the unit with respect to the trolley drivers is inappropriate, and I will dismiss the petition in 1-UC-799. Bethlehem Steel Corp., supra at 243-244.

Similarly, the Employer's maintenance supervisors have been historically excluded from the collective-bargaining unit. The maintenance supervisor classification has been in existence at Brush Hill for a number of years and has never been included in the bargaining unit. There is no evidence that the parties ever bargained about including these workers in the unit. The Union alleges, however, that their job duties have recently changed so that the maintenance supervisors are performing the work of unit mechanics. In support of this contention, the Union points to the fact that at an unspecified time last year, Brush Hill hired a maintenance supervisor to replace a retired unit mechanic. Under all the circumstances, I find that the record does not demonstrate any recent, substantial change in the duties of the maintenance supervisors such as would raise an issue as to the unit placement of this historically-excluded classification. See Plough, Inc., 203 NLRB 818, 819 (1973). I find, therefore, that clarification of the unit with respect to the maintenance supervisors is inappropriate, and I shall dismiss the petition in 1-UC-802. Bethlehem Steel Corp., supra at 243-244.

ORDER

IT IS HEREBY ORDERED that the petitions shall be, and they are, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 14, 2003.

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 31st day of January, 2003.

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